

REMARKS

The comments of the Examiner as set forth in the Office Paper mailed 10 March, 2005 have been carefully studied and reviewed.

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Claims 1-7 and 9-29 are currently pending in this application.

Claims 1-7, 9-21, 23, and 25-28 have been allowed.

Claims 22, 24 and 29 were rejected.

10 The amendments to the specification are to correct obvious typographical and grammatical errors.

Drawings

15 Figure 3 has been amended to include the legend —Prior Art— as requested. A replacement sheet is submitted herewith.

20 The drawings were objected to as failing to comply with 37 CFR 1.84(p)(5) because reference numerals 63 and 68, mentioned in the description on p. 11, line 4 were not shown in the Figures, specifically Fig. 9B. The sheet including Figs. 9A and 9B has been amended and a replacement sheet submitted herewith.

25 In both Figs. 9A and 9B, reference numeral 6 has been replaced by reference numeral 63; reference numeral 68 has been added in Fig. 9B; no new matter has been added. The specification, on p. 11, lines 3-9 refers to the stem of this embodiment comprising a rotating member 63 and a receiving member 64; the stem in Figs. 9A and 9B was inadvertently labeled with reference numeral 6 when it should have been reference numeral 63.

30 The drawings were objected to under 37 CFR §1.83(a) in that the "means for guiding" claimed in Claims 13 and 25 must either be shown or the feature cancelled from the claims.

Applicants submit that the "means for guiding" is described within the specification such that one skilled in the art at the time of the invention would recognize it.

Beginning with Claim 1, the "means for connecting "(Claim 1, line 6) refers to the tubing 7 which (Fig. 1) connects the stethoscope head with the earpiece (claim 1, line 6). The handle (Claim 1, last 2 lines) receives the connecting means therein. The sectional views of Figs. 5A and 5, 13, show reference numeral 100 referring to a fastener which, as described on page 11, line 34 – page 12, line 5, and at page 12, lines 15-28, acts as a means to guide the tubing within the handle. Thus, Applicants submit that the "means for guiding" is described within the specification, and does not comprise new matter. Applicants accordingly request that this objection to the drawings be withdrawn.

10 Claim 13 has been amended to correct a grammatical error; specifically, the deletion of "is" in line 1.

Specification

15 The disclosure was objected to because it allegedly fails to describe the limitations in Claims 13 and 25 (the "means for guiding") in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

20 In response, the Examiner is invited to review the comments described in previous paragraphs relating the objection to the drawings about the "means for guiding". Applicants submit that the drawings and specification cited above describe the limitations in Claims 13 and 25 (the "means for guiding") in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention, and that the objection to both Claims 13 and 25 be withdrawn.

25 Claim Objections

Claims 5, 6, 8, 13, 19-27 and 29 were objected to because of informalities in Claims 5 and 6, and that there was no Claim 8.

30 In response, two claims were inadvertently numbered as having claim number 5. The second claim 5, on page 15, line 4, has been amended to become Claim 6.

Claims 6 and 7, accordingly, have been amended to become Claims 7 and 8, respectively, thereby resolving the objections to Claims 5, 6 and 8.

Claim 13 is alleged to contain subject matter ("means for guiding") which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

5 This issue was addressed in previous paragraphs relating to the objection to the drawings about the "means for guiding", that response will be repeated here for the Examiner's convenience.

10 Beginning with Claim 1, the "means for connecting" (Claim 1, line 6) refers to the tubing 7 which (Fig. 1) connects the stethoscope head with the earpiece (claim 1, line 6). The handle (Claim 1, last 2 lines) receives the connecting means therein. In Figs. 5A and 13, reference numeral 100 refers to a fastener which, as described on page 11, line 34 – page 12, line 5, and at page 12, lines 15-28, acts as a means to guide the tubing within the handle. Thus, Applicants submit that the "means for guiding" is described within the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention, and that the objection to 15 both Claims 13 and 25 (see below) be withdrawn.

20 Claims 19-21 were objected to under 37 CFR § 1.75 as being a substantial duplicate of Claims 15-17 (MPEP §706.03(k)).

25 Section 706.03(k) of the MPEP states "...a patent is supposed to be limited to only one invention at a time, or at most, several closely related indivisible inventions... court decisions have confirmed applicant's right to restate (i.e., by plural claiming) the invention in a reasonable number of ways. Indeed, a mere difference in scope between claims has been held to be enough".

30 Claims 19-21 represent claims with a different scope than Claims 15-17 because each independent claim utilizes a different embodiment of the reflex hammer. This difference is emphasized by the amendment of Claim 15 to a method for employing a stethoscope as a diagnostic tool. Applicants are employing the court confirmed right to restate the invention in a reasonable number of ways, and respectfully request that the objection to Claims 19-21 be withdrawn.

Claims 22 and 24 were objected to, because the specification, while being enabling for the subject matter discussed in the current application (specification, page 10, lines 19-33, page 11,

line 25+ and page 12, lines 7-9) was alleged as not reasonably providing enablement for these two Claims.

5 Applicants assume this objection is to the last clause in each of Claims 22 and 24 ("the handle not being joined to the body", last two lines of Claim 22 and last line of Claim 24), based on a comparison of Claims 22 and 24 with allowed Claim 1.

10 Several alternate embodiments are described in the specification on page 16, lines 6- 17, and Figs. 10 – 13. Page 11, line 25 – p. 12, line 9 describes the use of the stem as a handle. For example, the embodiment in Figs. 10 and 12 (and described at p. 16, lines 13-17) illustrates one such embodiment, reference numeral 65, in which the stem of the stethoscope acts as the handle. The handle described receives the connecting means within, and as shown in these Figures, is not joined to the body.

15 Accordingly, Applicants' submit the specification enables a person skilled in the art to which it pertains, or with which it is most nearly connected, to use or make the invention commensurate in scope with these claims, and respectfully request that the objection to these Claims be withdrawn.

20 Claim 23 was objected to under 37 CFR §1.75 as being a substantial duplicate of Claim 1. In response, Applicants restate the basic principle of MPEP §706.03(k) regarding an applicant's right to plural claiming, that Claim 23 has a scope narrower than that of Claim 1, and thus, both Claims should be allowable. Therefore, Applicants respectfully request that the objection to Claim 23 be withdrawn.

25 The Examiner indicated that should claim 22 be found allowable, Claim 24 will be objected to under 37 CFR §1.75 as being a substantial duplicate of claim 22.

30 Applicants restate the basic principle of MPEP §706.03(k) regarding an applicant's right to plural claiming as described above, and because Claims 22 and 24 are of different scope, respectfully requests that when Claim 22 is found allowable, Claim 24 should also be found allowable.

35 In Claim 25, line 18, the ending period after "the stethoscope head" has been deleted, and a semicolon inserted as requested.

5 Claim 25 was objected to because it contains subject matter ("means for guiding") which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants' have addressed this issue in response to an objection to the drawings, an objection to the specification, and an objection to Claim 13; the Examiner is invited to review the response to the Claim 13 objection because it is also applicable to Claim 25, and that the objection to Claim 25 be withdrawn.

10 Claim 29 was objected to because the specification was alleged not to be enabling. This Claim has been cancelled without prejudice solely to advance the prosecution of this application.

Claim Rejections: 35 U.S.C. §102

15 Claims 22 and 24 were rejected under 35 U.S.C. §102(b) as being anticipated by Bates (U.S. Pat. No. 6,510,918).

20 Regarding both Claims 22 and 24, Applicants respectfully submit that Bates is an improper reference under 35 U.S.C. §102(b). In order to be a proper reference under 35 U.S.C. §102, the reference must teach every aspect of the claimed invention either explicitly or impliedly, and any feature not directly taught must be inherently present. MPEP 706.02(a).

25 The reference states that the chest piece 14, including the bell portion 21, diaphragm portion 20, communicating tube 22, and connecting tube 15 together constitute a single rigid structure (col. 4, lines 38-42); this "rigid" limitation is repeated in the independent Claims. Nowhere does the reference indicate this structure has any flexibility to it. In contrast Applicants define "semi-rigid" to include some flex to the combination (specification on p. 8, lines 14-18).

30 Also, the Bates device includes an O-ring (item 26, col. 4, lines 21-23), and a rim (item 24, col. 4, lines 46-50), Fig. 7, item 24 refers to the rim, not an opening.

 Because Bates fails to disclose all the elements of the claimed invention, it cannot be a proper reference under 35 U.S.C. §102(b), and therefore the rejection of Claims 22 and 24 must respectfully be withdrawn.

Claim Rejections: 35 U.S.C. §103

5 Claim 29 was rejected under 35 U.S.C. §103(a). This Claim has been cancelled without prejudice solely to advance the prosecution of this application.

Allowable Subject Matter

Claims 1-7, 9-21, 23 and 25-28 were allowed.

10 In view of Applicants' correction to the numbering of Claims 6 through 8, the Allowable Subject Matter should be corrected to encompass Claims 1-21, 23 and 25-28.

Conclusion

Thus, the present pending Claims distinguish over the prior art and define patentable subject matter.

15 Applicants thank the Examiner for his thoughtful review of this application, and respectfully requests the Examiner review the remaining pending Claims and to find that they define patentable subject matter. Thus, it is respectfully requested that the present pending Claims be allowed.

20 In the event that this Amendment does not place the application in condition for allowance, the Examiner is respectfully requested to telephone the undersigned in order that an attempt can be made to place the application in condition for allowance as expeditiously as possible.

Respectfully submitted,



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In the Drawings

Fig. 3 has been replaced by an amended Fig. 3, with "Prior Art" added after the Figure number.

Figs. 9A and 9B have been amended to add reference numerals.

5 Two replacement sheets (one with Fig. 3, the other with Figs 9A and 9B) are attached hereto.